

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CERTAINTEED CORPORATION
AI # 3063

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

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Enforcement Tracking Nos.
WE-CN-01-0373
WE-CN-00-0197

Docket Nos. 2002-7002-EQ
2002-0021-EQ

SETTLEMENT

The following Settlement is hereby agreed to between CertainTeed Corporation (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I.

Respondent is a corporation who owns and/or operates a vinyl building products manufacturing facility located at 3300 Pete Manena Road in Westlake, Calcasieu Parish, Louisiana (“the Facility”).

II.

On July 28, 2000 the Department issued a Compliance Order and Notice of Potential Penalty, Enforcement Number WE-CN-00-0197, to Respondent, which was based upon the following findings of fact:

An inspection conducted by the Department on or about January 28, 1999, revealed that Respondent was not monitoring and/or measuring its facility’s flow at Outfall 003 accurately.

Specifically, Respondent failed to provide the contract lab with data needed to calculate an accurate flow. The flow was based on the amount of time the plant was in operation. Respondent's failure to monitor and/or measure its facility's flow accurately is in violation of LWDPs permit WP4347 (Part III, Section A.1, and B.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.4. Respondent's failure to install an appropriate flow measuring device is in violation of LPDES permit LA0041025 Standard Conditions (Part III, Section A.2 and Section C.6), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

Further inspection conducted by the Department on or about January 28, 1999, revealed that Respondent was not maintaining proper records/reports as required by LPDES permit LA0041025. Specifically, Respondent failed to provide strip charts from the continuous flow recorder for review at the facility. A Discharge Monitoring Report (DMR) calculation check revealed that Respondent had miscalculated loading averages on DMRs. Further inspection revealed that Respondent failed to properly reference chain of custody on lab data sheets. Respondent's failure to maintain proper records/reports is in violation of LPDES permit LA0041025, Standard Conditions (Part III, Section A.2, Page 1 of 7, and Part III, Section C.3, Page 3 of 7), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.2, and LAC 33:IX.2355.J.3.

Further inspection conducted by the Department on or about January 28, 1999, revealed that Respondent failed to prepare and/or implement an adequate Spill Prevention and Control (SPC) plan. Specifically, thirty-five (35) drums of synthetic lubricants, along with eight (8) empty drums were observed on the west side of the maintenance building. These drums were

not in the containment area, nor were they covered. In addition, the three diked areas on the west side had open valves, and open drums and buckets were observed throughout the facility. Respondent's failure to prepare and/or implement an adequate SPC plan is in violation of La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.905.B.

An inspection conducted by the Department on or about February 22, 2000, revealed that the time and date for pH samples were not being recorded. Specifically the date, exact place, and time of sampling or measurements were not recorded. Respondent's failure to maintain proper records/reports as required by its permit is in violation of LPDES permit LA0041025 (Part III, Section A.2, and Part III, Section C.4.a), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.3.a.

Further inspection conducted by the Department on or about February 22, 2000, revealed that analytical results are not consistent with self-monitoring reported data. Specifically, BOD₅ and Oil and Grease are being reported as zero on the DMRs when they should be reported as less than the detection limit. Fecal coliform values were reported as >200 col/100 ml on the DMRs. The maximum permit limit for fecal coliform is 400 col/100 ml. A determination of a fecal coliform exceedance could not be made due to inaccurate reporting of the sample results. Respondent's failure to properly report monitoring results on DMRs is in violation of LPDES permit LA0041025 (Part III, Section A.2 and Part III, Section D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.a.

An inspection conducted by the Department on or about February 22, 2000, revealed that the flow measurement at Outfall 001 did not meet the requirement and intent of the

permit. Specifically, the flow calculation at Outfall 001 revealed a 16.9% error. The permit requires a maximum deviation of less than 10% from the true discharge rate. Also, the calibration frequency of the flowmeter was not adequate. The last calibration of the flowmeter was September 11, 1998. The failure to calibrate and maintain a flow measuring device capable of ensuring accuracy of measurements is in violation of LPDES permit LA0041025 (Part III, Section A.2, Part III, Section C.5.b, and Part III, Section C.6), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.1.

Further inspection conducted by the Department on or about February 22, 2000, revealed that Respondent failed to prepare and/or implement an adequate SPC plan. Specifically, there were areas where oil was spilled onto the ground outside of a diked area around a valve. The failure to prepare and/or implement an adequate SPC plan is in violation of La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.905.B.

A file review conducted by the Department on or about April 24, 2000, revealed that Respondent failed to submit complete and accurate DMRs by the 15th of the month following each monitoring period for the monitoring periods between March 1998 and March 1999, with the exception of the 4th quarter period 1998. These monitoring periods included monthly, quarterly, and yearly DMR submittals. Additionally Respondent failed to submit a complete and accurate DMR for the months of August 1999 and September 1999. Respondent's failure to submit complete and accurate DMRs as required by its permit is in violation of LPDES permit LA0041025 (Part I, Section C.2 and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

Further inspection and file review conducted by the Department on or about April 24, 2000, revealed the following effluent violations for Outfall 001:

Monitoring Period	Parameter	Permit Limit	Sample Value
09/98	BOD ₅	95 lbs/day	110 lbs/day
09/98	TSS	157 lbs/day	288 lbs/day
09/98	Fecal Coliform	400 col/100ml	1,600 col L/100ml
10/98	BOD ₅	95 lbs/day	117 lbs/day
Monitoring Period	Parameter	Permit Limit	Sample Value
04/99	Fecal Coliform	400 col /100ml	900 col /100ml
7/99	Fecal Coliform	400 col /100ml	1,100 col /100ml
9/99	TSS	157 lbs/day	779 lbs/day
9/99	TSS	507 lbs/day	1,583 lbs/day
11/99	Fecal Coliform	400 col/100 ml	5,800 col/100 ml
11/99	Fecal Coliform	400 col/100 ml	5,200 col/100 ml
12/99	pH	6.0 SU	2.03 SU
12/99	pH	6.0 SU	2.52 SU
1/00	Fecal Coliform	400 col/100 ml	8,300 col/100 ml
2/00	Fecal Coliform	400 col/100 ml	1,500 col/100 ml
3/00	TSS	157 lbs/day	< 322 lbs/day
3/00	TSS	507 lbs/day	< 680 lbs/day

Each of the above-listed effluent violations reported by Respondent on DMRs is in violation of LPDES permit LA0041025 Effluent Limitations and Monitoring Requirements (Part I, Page 1 and 3 of 9 and Part III, Section A.2), La. R.S. 30:2075, La. R.S. 30:2076 (A) (1), La. R.S. 2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

Further file review conducted by the Department on or about April 24, 2000, revealed that Respondent failed to sample its effluent in accordance with permit guidelines. Specifically, no sample was taken for pH at Outfall 003 for the monitoring period in May 1999. Furthermore, Respondent failed to report its minimum pH value on the August 1999 DMR for Outfall 003. Respondent's failure to sample its effluent as required by its permit is in violation of LPDES

permit LA0041025 Effluent Limitations and Monitoring Requirements (Part I, Page 7 of 9, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A. Respondent's failure to report its minimum pH value on the DMR for Outfall 003 is in violation of LPDES permit LA0041025 (Part I, Page 7 of 9, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.

On August 31, 2001, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-01-0373, to Respondent, which was based upon the following findings of fact:

Respondent was issued National Pollutant Discharge Elimination System (NPDES) permit LA0041025 from the Environmental Protection Agency (EPA) effective on October 1, 1996, with an expiration date of September 30, 2001. In accordance with the assumption of the LPDES program by the state, NPDES permit LA0041025 became a Louisiana Pollutant Discharge Elimination System (LPDES) permit with the same expiration date. Under the terms and conditions of the LPDES permit, the Respondent is authorized to discharge incinerator wastewater, process drains, railcar sump, water well overflow, stormwater, non-contact cooling water from air compressors and cyclone air cooling units, cooling tower blowdown, boiler blowdown, and treated sanitary wastewater to an unnamed ditch, thence to the PPG Industries-owned Silica Pigments Ditch, thence to the PPG Industries-owned PPG Canal, thence to Bayou D'Inde, waters of the state.

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing.

An inspection conducted by the Department on or about May 23, 2001, and subsequent

file review on or about June 27, 2001, revealed the following permit excursions, as reported by Respondent on Discharge Monitoring Reports:

Monitoring Period	Outfall	Parameter	Permit Limit	Result
June 2001	001	Fecal Coliform	400 col/100 ml (Daily Max.)	2,200 col/100 ml
April 2001	001	Fecal Coliform	400 col/100 ml (Daily Max.)	450 col/100 ml
March 2001	001	TSS	507 lbs/day (Daily Max.)	522 lbs/day
December 2000	001	TSS	507 lbs/day (Daily Max.)	1,291 lbs/day
November 2000	001	pH	6.0 – 9.0 SU	2.37 SU
October 2000	001	Fecal Coliform	400 col/100 ml (Daily Max.)	1,620 col/100 ml
September 2000	001	Vinyl Chloride	0.33 lbs/day (Daily Avg.)	1.07 lbs/day
		Vinyl Chloride	0.58 lbs/day (Daily Max.)	2.15 lbs/day
August 2000	001	Fecal Coliform	400 col/100 ml (Daily Max.)	520 col/100 ml
June 2000	001	pH	6.0 – 9.0 SU	9.36 SU

These excursions of the permit constitute violations of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0197, LPDES permit LA0041025 (Part I, Section A, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

An inspection conducted by the Department on or about May 23, 2001, revealed that Respondent was not maintaining proper records and reports as required by LPDES permit LA0041025. These deficiencies in records and reports are listed below:

- A. Respondent was not consistently reporting analytical results from all samples taken during the monitoring period. The failure to submit complete DMRs constitutes a violation of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0197, LPDES permit LA0041025 (Part I, Section C, and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.2, and LAC 33:IX.2767.A.5.
- B. There was no flow recorded on the chain of custody form. A flow value is needed to complete the calculations for effluent loadings. The failure to record the flow on the

chain of custody form constitutes a violation of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0197, LPDES permit LA0041025 (Part III, Sections A.2 and C.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, LAC 33:IX.2355.J.3.a, LAC 33:IX.2355.J.3.b, and LAC 33:IX.2767.A.5.

A file review conducted by the Department on or about June 27, 2001, revealed the Respondent failed to submit Noncompliance Reports (NCRs) when an excursion of the permit occurred. Specifically, Respondent had excursions of the permit effluent limitations on December 2000, March 2001, and April 2001 that were not reported to the Department in writing. The failure to submit a noncompliance report constitutes a violation of LPDES permit LA0041025 (Part II, Section B, and Part III, Sections A.2 and D.8), La. R. S. 30:2076 (A) (3), La. R.S. 30:2076 (D), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.7.

A file review conducted by the Department on or about June 27, 2001, revealed that Respondent failed to report pH as specified in the permit. Specifically, Respondent failed to report the minimum for pH at outfall 003 during the monitoring period of April 2000. The failure to report the minimum as specified in the permit constitutes a violation of LPDES permit LA0041025 (Part I, Section A, and Part III, Sections A.2), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2767.A.5.

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing.

On or about October 23, 2001, and October 21, 2002, follow up inspections were conducted by DEQ personnel of the vinyl building products facility to determine the degree of compliance with the Louisiana Environmental Quality Act and the Water Quality Regulations.

The following violation(s) were noted during the course of the inspection:

- A. An inspection conducted by the Department on or about October 23, 2001, disclosed that the Respondent submitted incorrect Discharge Monitoring Reports (DMRs). Specifically, the DMR for August 2001 lists the number of exceedances as four for fecal coliform, but only two samples were analyzed the month of August. The highest sample for Fecal coliform was 1,200 col/100 ml, however the DMR lists >12,000 col/100 ml. The failure to submit correct DMRs constitutes a violation of LPDES permit LA0041025 (Part III, Section A.1 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.L.4.
- B. Inspections conducted by the Department on or about October 23, 2001, October 21, 2002, and subsequent file review on May 29, 2003, disclosed that the Respondent had exceedances of the effluent limitations as follows:

Monitoring Period	Outfall	Parameter	Permit Limit	Result
August 31, 2002	001	TSS (Daily Avg.)	157 lbs/day	<303 lbs/day
February 28, 2002	001	TSS (Daily Avg.)	157 lbs/day	<181 lbs/day
November 2001	001	Fecal Coliform (Daily Max.)	400 col/100 ml	1,300 col/100 ml
August 23, 2001	001	Fecal Coliform (Daily Max.)	400 col/100 ml	1,200 col/100 ml
August 22, 2001	001	Fecal Coliform (Daily Max.)	400 col/100 ml	450 col/100 ml

Each excursion of the effluent limitation constitutes a violation of LPDES permit LA0041025 (Part I, Page 2, and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

- C. A file review conducted by the Department on or about May 29, 2003, revealed that the Respondent failed to submit noncompliance reports (NCRs) for exceedances of the effluent limitations. Specifically, the Respondent failed to submit NCRs for exceedances of TSS which occurred during the monitoring periods of August 31, 2002 and February 28, 2002. Each failure to submit noncompliance reports for the monitoring periods of February 28, 2002, and August 31, 2002, constitutes a violation of LPDES permit LA0041025 (Part III, Sections A.2, and D.8), La. R. S. 30:2076 (A) (3), La. R.S. 30:2076 (D), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.7.

III.

In lieu of the issuance of a notice of potential penalty and/or penalty assessment to the Respondent, the Respondent and the Department have agreed to the following terms.

IV.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V.

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) of which ONE THOUSAND NINE HUNDRED EIGHTY-FIVE AND 58/100 DOLLARS (\$1,985.58) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI.

Respondent further agrees that the Department may consider the inspection report(s), the Compliance Order and Notice of Potential Penalties, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement.

VIII.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

IX.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Calcasieu Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X.

Payment is to be made **within ten (10) days** from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and

mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XI.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

Bruce J. Brocka
(Signature)

Bruce J. Brocka
(Printed or Typed)

Rickie Comeney
(Signature)

Rickie Comeney
(Printed or Typed)

CERTAIN TEED CORPORATION

BY: Frank L. Conrad
(Signature)

Frank L. Conrad
(Printed or Typed)

TITLE: Plant Manager

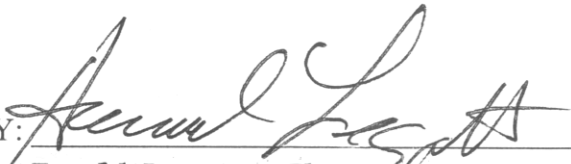
THUS DONE AND SIGNED in duplicate original before me this 4th day of February, 20 04, at Lake Charles, LA

Marilyn Stone
NOTARY PUBLIC (ID # 8808)

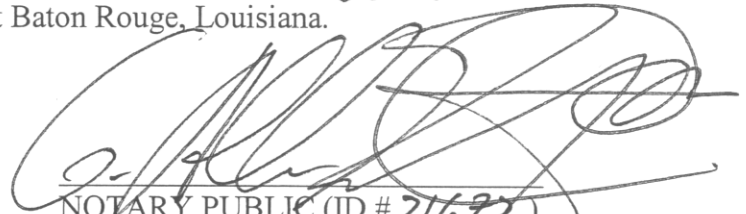
Marilyn Stone
(Printed or Typed)

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: 
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 30th day of
August, 20 04, at Baton Rouge, Louisiana.


NOTARY PUBLIC (ID # 21693)

G. Allen Kirkpatrick
(Printed or Typed)

Approved: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

August 12, 2004


Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
CertainTeed Corporation
WE-CN-01-0373; WE-CN-00-0197; AI #3063

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


CHARLES C. FOTI, JR.
Attorney General

CCF,Jr./tp